Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

FACTUM OF THE FOREIGN REPRESENTATIVE
(Recognition of Foreign Main Proceeding)

December 16, 2021

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PART I – OVERVIEW

1. On October 14, 2021 (the "**Petition Date**"), LTL Management LLC ("**LTL**" or the "**Debtor**") commenced a case (the "**Chapter 11 Case**") by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") with the United States Bankruptcy Court for the Western District of North Carolina (the "**North Carolina Bankruptcy Court**"). The Chapter 11 Case was subsequently transferred to the United States Bankruptcy Court for the District of the New Jersey (the "**New Jersey Bankruptcy Court**").

2. LTL was appointed to act as the foreign representative of itself (in such capacity, the "**Foreign Representative**") by the New Jersey Bankruptcy Court in order to, among other things, bring this Application pursuant to section 46 of the *Companies' Creditors Arrangement Act,* R.S. C. 1985 ("**CCAA**"), for orders (the "**Initial Recognition Order**" and "**Supplemental Recognition Order**", together, the "**Orders**"), among other things:

(A) Recognizing the Chapter 11 Case as a "foreign main proceeding" under the CCAA;

(B) Recognizing and giving full force and effect in all provinces and territories of Canada to the Foreign Representative Order and the US Preliminary Injunction (each as defined below); and

(C) Appointing Ernst & Young Inc. ("**E&Y**") as information officer in connection with this proceeding.

PART II – SUMMARY OF THE FACTS

A. BACKGROUND

3. The Debtor in this proceeding is an indirect subsidiary of Johnson & Johnson ("**J&J**"). J&J is a global innovator and leader in public health.[1]

4. The J&J group of companies (the "**J&J Group**") includes approximately 250 subsidiary companies with operations in 60 countries, including Canada. The J&J Group's operations in Canada include the subsidiary Johnson & Johnson Inc. ("**J&J Canada**"). [2]

5. The Debtor's roots can be traced back to Johnson & Johnson Baby Products Company ("**J&J Baby Products**").[3] Through a series of name changes and intercompany transactions occurring between 1981 and 1997, J&J Baby Products ultimately became known as Johnson and Johnson Consumer Companies Inc. ("**J&J Consumer Companies**"). In 2015, J&J Consumer Companies merged with and into an affiliate resulting in an entity known as Johnson & Johnson

[1] Affidavit of John K. Kim sworn December 16, 2021 ("**Kim Affidavit**") at para 14.
[2] Kim Affidavit at para 15.
[3] Kim Affidavit at para 17.

Consumer Inc. (including all former names and corporate predecessors, "**Old JJCI**"). Old JJCI became responsible for all claims in respect of JOHNSON'S® Baby Powder. [4]

6. In 2021, Old JJCI implemented a corporate restructuring (the "**2021 Corporate Restructuring**") through a series of sequential corporate steps, including a divisional merger under the Texas Business Organizations Code. Upon the effectiveness of the 2021 Corporate Restructuring, Old JJCI ceased to exist and two new entities were created: (a) the Debtor, and (b) another new entity which ultimately changed its name to Johnson & Johnson Consumer Inc. ("**New JJCI**"). As a result of the 2021 Corporate Restructuring, the Debtor holds certain of Old JJCI's assets and is responsible for all talc-related claims against Old JJCI (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws).[5]

7. The 2021 Corporate Restructuring was designed to ensure that the Debtor has the same, if not greater, ability to fund the costs of defending and resolving future and present talc-related claims as Old JJCI did before the 2021 Corporate Restructuring.[6]

B. FINANCIAL CHALLENGES & TALC CLAIMS

8. The Chapter 11 Case was precipitated by the filings of thousands of talc-related lawsuits in the United States against, among others, Old JJCI and J&J, which allege that JOHNSON'S® Baby Powder purportedly causes ovarian cancer and mesothelioma.[7]

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[4] Kim Affidavit at paras 18-20.
[5] Kim Affidavit at paras 21-22.
[6] Kim Affidavit at para 29.
[7] Kim Affidavit at para 37.

9. In addition to the talc claims faced by Old JJCI in the United States, Old JJCI, J&J, J&J Canada and Valeant Pharmaceuticals International, Inc. ("**Valeant**"), now Bausch Health Companies Inc. ("**Bausch**"), are named co-defendants (collectively, the "**Canadian Co-Defendants**") in some or all of the talc lawsuits commenced in Canada (collectively, the "**Canadian Actions**").[8]

10. Unlike J&J, J&J Canada and Old JJCI, the Canadian Co-Defendant Bausch is not now, nor was it previously, a member of the J&J Group. Valeant, as predecessor to Bausch, acquired certain assets from Old JJCI, including the rights to the brand Shower to Shower®, an absorbent body powder. The Debtor, as successor to Old JJCI, has indemnified Bausch with respect to talc- related liabilities.[9]

11. Prior to the commencement of the Chapter 11 Case, Old JJCI incurred nearly $1 billion in costs to defend personal injury lawsuits relating to alleged talc exposure, nearly all of which was spent in the last five years. In the months prior to the Petition Date, Old JJCI was paying defense costs in the range of $10 million to $20 million a month. In addition to these costs, Old JJCI has made approximately $3.5 billion in indemnity payments in connection with settlements and verdicts (all amounts in USD).[10]

12. In addition, the inconsistent results of talc-related litigation created substantial uncertainty and inhibited Old JJCI's ability to focus on its business operations.[11]

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[8] Kim Affidavit at para 40.
[9] Kim Affidavit at paras 41-43.
[10] Kim Affidavit at para 50.
[11] Kim Affidavit at para 53.

13. The Debtor is of the view that the talc-related claims have no valid scientific basis. Nevertheless, the number of claims has continued to increase and the Debtor anticipates that, absent finality reached through a global resolution, the talc claims and their associated burdens will continue for decades to come.[12]

C. STATUS OF CHAPTER 11 PROCEEDINGS

14. The Debtor commenced the Chapter 11 Case in order to equitably and permanently resolve all current and future talc-related claims against it. The Debtor's goal in the Chapter 11 Case is to negotiate, obtain approval of and ultimately consummate a plan of reorganization that will, among other things, (a) establish and fund a trust to resolve and pay current and future talc-related claims, and (b) provide for the issuance of an injunction that will permanently protect the Debtor, its affiliates and certain other parties from further talc-related claims arising from products manufactured and/or sold by Old JJCI, or for which Old JJCI may otherwise have legal responsibility. The Debtor seeks to engage in good faith negotiations to reach a consensual resolution of the Chapter 11 Case with representatives for current and future claimants as soon as possible.[13]

15. At the first day hearings held on October 20, 2021 (the "**First Day Hearings**") the Debtor obtained certain relief (the "**First Day Orders**") from the North Carolina Bankruptcy Court.[14] At the First Day Hearing, the North Carolina Bankruptcy Court also issued a temporary restraining

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[12] Kim Affidavit at para 37.
[13] Kim Affidavit at para 7
[14] Kim Affidavit at para 54.

order in favour of the Debtor and Old JJCI but did not reach a final decision regarding whether a stay order should be extended to other Protected Parties (defined below).[15]

16. On November 15, 2021, the North Carolina Bankruptcy Court issued an interim ruling (the "**US Preliminary Injunction**") in effect for 60 days (i.e. until January 14, 2022) subject to modification or extension by court order, staying and enjoining commencement or continuation of any action by the plaintiffs, including the plaintiffs in the Canadian Actions, seeking to hold the following entities liable for Enjoined Talc Claims[16]:

(A) the Debtor

(B) Old JJCI;

(C) certain of the Debtor's non-debtor affiliates, including New JJCI, J&J and J&J Canada;

(D) certain third party retailers who sold Old JJCI's talc-containing products and other third parties, including Valeant and Bausch, whom the Debtor has indemnified contractually, also set forth on the Protected Party Appendix; and

(E) certain insurance entities.

(collectively, the "**Protected Parties**").[17]

17. Also on November 10, 2021, the North Carolina Bankruptcy Court made a ruling directing that the Chapter 11 Case be transferred to the District of New Jersey.[18] A hearing is scheduled for

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[15] Kim Affidavit at para 56.

[16] "Enjoined Talc Claims" means, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc containing materials that were formerly asserted (or that could have been asserted) against Old JJCI on any theory of liability.

[17] Kim Affidavit at paras 9 and 60.

[18] Kim Affidavit at para 61.

January 11, 2022 before the New Jersey Bankruptcy Court to determine whether a more permanent injunction should be put in place.[19]

18. A hearing was also held before the New Jersey Bankruptcy Court on December 15, 2021 at which the Debtor sought and obtained authorization to act as the Foreign Representative on behalf of its estate in any judicial or other proceedings in Canada (the "**Foreign Representative Order**").[20]

19. The Foreign Representative is before this Court seeking, among other things, to have the Chapter 11 Case recognized as a "foreign main proceeding" and the Foreign Representative Order and the US Preliminary Injunction (together, the "**Foreign Orders**") recognized and given effect to in Canada.[21]

PART III – ISSUES AND THE LAW

20. This factum addresses the following issues:

(A) Should the Chapter 11 Case be recognized as a "foreign main proceeding"?

(B) Should LTL be granted the relief requested in the Orders, including:

(i) Granting the stay of proceedings, including in respect of the Canadian Actions and Canadian Co-Defendants;

(ii) Recognition of the Foreign Orders;

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[19] Kim Affidavit at para 63.
[20] Kim Affidavit at paras 64-68.
[21] Kim Affidavit at para 69.

(iii) Appointment of Ernst & Young Inc. as Information Officer;

(iv) Dispensing with the requirement under Section 53(b) of the CCAA to publish notice of the Recognition Proceedings in one or more Canadian newspapers;

(v) Confirming that matters related to this proceeding shall be brought before this Court; and

(vi) Adopting the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network (the "**JIN Guidelines**").

21. For the reasons that follow, the Foreign Representative submits that each of the foregoing questions should be answered in the affirmative and that it is appropriate to grant the relief requested on this Application.

A. THE CHAPTER 11 CASE IS A FOREIGN MAIN PROCEEDING

i) The Chapter 11 Case is a Foreign Proceeding

22. Pursuant to Section 46(1) of the CCAA, a foreign representative may apply to the court for recognition of a foreign proceeding, in respect of which that person is a foreign representative.[22]

23. Section 47 of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

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[22] CCAA, s. 46(1)

(i) The application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA; and

(ii) The applicant is a "foreign representative" within the meaning of the CCAA in respect of that foreign proceeding.[23]

24. Section 45(1) of the CCAA defines a "foreign proceeding" as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization. Canadian courts have generally considered it self-evident that proceedings pursuant to the US Bankruptcy Code under the supervision of a US bankruptcy court, satisfy these criteria. Canadian courts have consistently recognized such proceedings to be "foreign proceedings" for the purposes of the CCAA.[24]

25. Further, LTL is a debtor company within the meaning of the CCAA. The definition of a debtor company in the CCAA includes any "company" that is "insolvent." Under the CCAA, a "company" includes any incorporated company having assets in Canada.[25]

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[23] CCAA, s. 47.

[24] CCAA, s. 45(1), "foreign proceeding"; *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238 at para 27; *Payless Holdings LLC (Re)*, 2017 ONSC 2242 at para 22; *Horsehead Holdings Corp. (re)*, 2016 ONSC 958 at para 20.

[25] CCAA, s.2(1) "company" and "debtor company".

26. LTL is incorporated pursuant to the laws of North Carolina. LTL's only assets in Canada will be funds held by its legal counsel. Such funds have been wired but not yet received. LTL's legal counsel in Canada will undertake to advise the Court when such funds are received.[26]

27. Such funds provided to counsel in any amount will be sufficient for the purposes of satisfying the requirement to "have assets in Canada", as the court need not engage in a qualitative or quantitative analysis of Canadian assets in order to decide whether or not a company qualifies for relief under the CCAA.[27]

ii) LTL is a Foreign Representative

28. The second requirement under section 47 of the CCAA is that the applicant is a "foreign representative" in respect of the foreign proceeding.

29. The CCAA defines a "foreign representative" as:

> a person or body, including one appointed on an interim basis, who is authorized in a foreign proceeding in respect of a debtor company, to (a) monitor the debtor's business and financial affairs for the purpose of a reorganization, or (b) act as a representative in respect of the foreign proceeding.[28]

30. LTL was appointed by the New Jersey Bankruptcy Court to act as a representative of the Debtor in respect of the Chapter 11 Case and with respect to this recognition proceeding by way of the Foreign Representative Order. Therefore, LTL meets the CCAA definition of a "foreign representative" in respect of the foreign proceeding.

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[26] Kim Affidavit at para 32.

[27] *Global Light Telecommunication Inc*. Re, 2004 BCSC 745

[28] CCAA, s. 45 "foreign representative".

iii) The Chapter 11 Case is a "Foreign Main Proceeding"

31. If the Court grants an order under section 47(1) of the CCAA, section 47(2) requires that the Court specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding.[29]

32. Section 45(1) of the CCAA provides that a "foreign main proceeding" is a foreign proceeding in a jurisdiction where the debtor company has the "centre of its main interests" ("**COMI**").[30]

33. While the CCAA does not define what constitutes a debtor's COMI, pursuant to section 45(2) of the CCAA, in absence of proof to the contrary, a debtor company's COMI is presumed to be the location of its registered office.[31]

34. In circumstances where it has been necessary to go beyond the presumption in section 45(2) to determine the debtor's COMI, Canadian courts have also taken into account certain factors, including (i) the location of the debtor that is readily ascertainable by creditors, (ii) the location of the debtor's principal assets or operations, and (iii) the location where management of the debtor takes place.[32]

35. The Debtor maintains its registered head office in New Jersey.[33] Additionally, all members of the Debtor's board of directors and management reside in the United States.[34] Pursuant to a

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[29] CCAA, s. 47.
[30] CCAA, s. 45(1).
[31] CCAA, s. 45(2).
[32] *Lightsquared LP (Re)*, 2012 ONSC 2994 **[*Lightsquared*]** at para 25.
[33] Kim Affidavit at para 23.
[34] Kim Affidavit at para 24.

services agreement, Johnson & Johnson Services, Inc., a non-debtor affiliate of the Debtor, has agreed to provide the Debtor with certain corporate and administrative services, including treasury and procurement, corporate finance, accounting, human resources, information technology, legal, risk management, tax and other support services. These services are all provided out of the United States.[35]

36. The only asset of the Debtor located in Canada will be funds held by the Toronto office of its Canadian counsel.[36]

37. The granting of an order recognizing the Chapter 11 Case as a foreign main proceeding is also appropriate for the following reasons:

(A) the North Carolina Bankruptcy Court and subsequently the New Jersey Bankruptcy Court, have taken jurisdiction over the Chapter 11 Case. Comity will be furthered by this Court's recognition of and support for the Chapter 11 Case already underway in the United States;

(B) given the close connection between the Debtor and the United States, it is reasonable for the New Jersey Bankruptcy Court to have principal control over the insolvency process; and

(C) coordination of proceedings in the two jurisdictions will better ensure equal and fair treatment of all stakeholders.

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[35] Kim Affidavit at paras 25-26.

[36] Kim Affidavit at para 32.

38. Accordingly, the Foreign Representative submits that the Debtor's COMI is the United States and the Chapter 11 Case is a "foreign main proceeding" under section 47(2) of the CCAA.

B. THE RELIEF SOUGHT SHOULD BE GRANTED

i) The stay of proceedings is necessary and appropriate

39. Section 48(1) of the CCAA requires the Court to grant mandatory relief once a proceeding is found to be a foreign main proceeding, including:

> (A) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> (B) restraining until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
>
> (C) prohibiting, unless otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
>
> (D) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.[37]

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[37] CCAA, s. 48(1).

40. The Initial Recognition Order sought by the Foreign Representative is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all the relief required by section 48 of the CCAA.

ii) Recognition of the Foreign Orders is necessary and appropriate

41. In addition to the mandatory relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order necessary for the protection of the debtor company's property or the interests of a creditor or creditors.[38]

42. To that end, the Foreign Representative is also seeking an order recognizing and giving effect to the US Preliminary Injunction entered by the North Carolina Bankruptcy Court and Foreign Representative Order entered by the New Jersey Bankruptcy Court in Canada to coordinate these proceedings with the Chapter 11 Case.

43. The US Preliminary Injunction. The US Preliminary Injunction puts in place a preliminary injunction in effect for 60 days (until January 14, 2022) staying and enjoining the commencement or continuation of any action seeking to hold the Protected Parties, which include the Canadian Co-Defendants and New JJCI, liable for Enjoined Talc Claims, including the Canadian Actions.[39]

44. If an order recognizing a foreign proceeding is made, the Canadian Court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court

[38] CCAA, s.49 and 50; *Purdue Pharma L.P., Re*, 2019 ONSC 7042 [***Purdue***] at para 22.
[39] Kim Affidavit at paras 59-60.

in the foreign proceeding. The principles of comity, cooperation and accommodation with foreign courts guide the CCAA courts in the exercise of their discretion in cross-border insolvency cases.[40]

45. Comity mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.[41]

46. The draft Supplemental Recognition Order specifically provides that all of the Canadian Actions are stayed from continuing against the Canadian Co-Defendants for the duration of the US Preliminary Injunction. This relief is intended to provide clarity for the Debtor and its stakeholders that the Canadian Actions are stayed by the US Preliminary Injunction as a result of the issuance of the Initial Recognition Order and Supplemental Recognition Order, if granted by this Court.[42]

47. The Foreign Representative is not asking this Court to exercise its autonomous jurisdiction to extend the stay of proceedings to third parties.[43] Rather, it is requesting that this Court recognize the US Preliminary Injunction which will have the effect of staying the Canadian Actions against the Canadian Co-Defendants. Nevertheless, the Foreign Representative submits that the principles relevant to extending the stay of proceedings to third parties are satisfied in this case.

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[40] CCAA s. 52(1); *Purdue* at para 21; *Morguard Investments Ltd. v De Savoye* (1990) 76 D.L.R. (4th) 256.

[41] *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238 at para 41.

[42] Supplemental Recognition Order at section 7.

[43] See for example *Purdue*; *Pacific Exploration & Production Corp. (Re)*, 2016 ONSC 5429 at para 26; *JTI-Macdonald Corp. (Re)*, 2019 ONSC 1625; *Muscletech Research & Development Inc. (Re)*, 2006 19 C.B.R. (5th) 51 at para 3; *4519922 Canada Inc. (re)*, 2015 ONSC 124 at para 54.

48. Where the court has exercised its autonomous jurisdiction to extend the stay of proceedings to third parties in both plenary CCAA proceedings and recognition proceedings, they have done so on the basis that it was "fair and reasonable" to do so under the circumstances.[44]

49. In that regard, the Foreign Representative notes that recognition of the US Preliminary Injunction does not impact any party's substantive rights. No releases are being sought at this time. No determination of the merits of Canadian Actions is being sought at this time. No compromise or settlement is being proposed. The Foreign Representative also observes that:

(A) the plaintiffs in the Canadian Actions were named in the complaint filed in the Chapter 11 Case to obtain the US Preliminary Injunction and the Canadian Co-Defendants were included as Protected Parties to whom the US Preliminary Injunction applies;

(B) the plaintiffs in the Canadian Actions have asserted claims which are intended to be resolved as part of the Chapter 11 Case;

(C) the unliquidated claims in the US against the Debtor, as successor to Old JJCI, have significant overlapping issues with the claims asserted in the Canadian Actions; and

(D) the Chapter 11 Case presents a unique opportunity for the parties to explore resolution of the claims instead of the current litigious path, which is costly and time consuming.[45]

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[44] *Pacific Exploration & Production Corp. (Re)*, 2016 ONSC 5429 at para 26; *JTI-Macdonald Corp. (Re)*, 2019 ONSC 1625.

[45] Kim Affidavit at para 77.

50. The Foreign Representative therefore submits that recognition and enforcement of the US Preliminary Injunction in Canada is, consistent with the principles of comity and is fair and reasonable in the circumstances.

51. The Foreign Representative Order. The Foreign Representative Order expressly authorizes the Debtor, in its capacity as Foreign Representative, to (a) seek recognition of the Chapter 11 Case in Canada, (b) request that the Canadian Court (as defined therein) grant comity to the Foreign Representative and the Chapter 11 Case, (c) seek any other appropriate relief from the Canadian Court that is just and proper in furtherance of the protection of the Debtor's estate, and (d) consistent with any orders of the Canadian Court, pay the costs of the Information Officer (defined below) and its counsel without further order of the New Jersey Bankruptcy Court.[46]

52. The Foreign Representative submits that it is reasonable and appropriate to recognize and give effect to the Foreign Representative Order and confirm in Canada the authority granted to it by the New Jersey Bankruptcy Court.

iii) The Information Officer should be appointed

53. EY has consented to act as Information Officer and is not conflicted from acting in such capacity.[47]

54. Although the CCAA does not require that an Information Officer be appointed, a practice has developed whereby the court appoints an information officer (typically a financial advisory

[46] Kim Affidavit at para 68.
[47] Kim Affidavit at para 78.

firm that is a licensed insolvency trustee) pursuant to its discretionary powers to assist the court and keep the court apprised of the status of the foreign proceedings.[48]

55. In this case, the Foreign Representative requests the appointment of the Information Officer to ensure that this Court is kept apprised of the status of the Chapter 11 Case by an independent third-party licensed insolvency professional and to assist in providing information to and responding to inquiries from interested parties in Canada.[49]

iv) The notice requirement should be dispensed with

56. Section 53(b) of the CCAA requires the Foreign Representative to "publish, without delay, after the order [recognizing the foreign proceeding is made] once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing certain prescribed information."[50] [*emphasis added*]

57. Section 53(b) of the CCAA therefore allows the court to make any direction it sees fit regarding publication of notice. Therefore, the Court has discretion to make an order exempting the Foreign Representative from the requirements of section 53(b) and the Court has previously exercised such jurisdiction where it has found that affected stakeholders have been provided with ample notice of and information about the foreign proceedings and that compliance with section 53(b) would serve no valuable purpose and would result in unnecessary costs.[51].

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[48] CCAA, s. 49-50; *Babcock & Wilcox Canada Ltd.*, 18 CBR (4th) 157 (ONSC) at para 22, *Tucker v Aero Inventory (UK) LTd.*, 2009 CanLii 63138 (ONSC) at para 20; *Lear Canada (re)*, 55 CBR (5th) 57 (ONSC) at para 23, *Lightsquared* at paras 35-37.

[49] Kim Affidavit at para 79.

[50] CCAA, section 53(b).

[51] *syncreon Group B.V., Re*, 2019 ONSC 5774 at para 45.

58. Such an order is appropriate for the following reasons: (i) plaintiffs' counsel in the Canadian Actions were provided with notice of this application on December 3, 2021 by way of letter enclosing the Foreign Representative's draft Application Record (Canadian counsel to the Official Committee of Talc Claimants was provided with the draft Application Record on December 10, 2021), and (ii) with the exception of the plaintiffs in the Canadian Actions, creditors, suppliers, customers, employees and other stakeholders in Canada are not affected by the Chapter 11 Case.[52]

59. Additionally, all documents related to the Chapter 11 Case are available to the public on a website that has been established by the Claims, Noticing and Ballot Agent, Epiq Corporate Restructuring LLC at the following URL: https://dm.epiq11.com/case/ltl/info. All documents related to the within recognition proceeding will be available to the public on a website established by the Information Officer at the following URL: www.ey.com/ca/ltlmanagement.[53]

v) This Court should remain seized of any matters related to these proceedings

60. The proposed Supplemental Recognition Order contains certain modifications to the Ontario Model Supplemental Recognition Order to make parties aware that this Court is seized of any matter related to these proceedings and any motion to amend or vary the Supplemental Recognition Order should be filed with this Court.[54]

61. A fundamental tenant of Canadian insolvency process is the "single control" model that favours consolidating all litigation involving the debtors to a single jurisdiction in order to be

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[52] Kim Affidavit at para 82.
[53] Kim Affidavit at para 83.
[54] Supplemental Recognition Order at section 24.

addressed. The single proceeding model allows for the insolvency process to move forward in an efficient, collective manner and ensures that the Court most familiar with the debtor hears matters that may impact their business and restructuring efforts.[55]

62. In this case, the Canadian Actions are spread across various provinces and the plaintiffs are located in various jurisdictions. To ensure that there is a "single control" jurisdiction for these recognition proceedings and that matters related to the Debtor are centralized before this Court, the additional language included in the proposed Supplemental Recognition Order is appropriate.

vi) This Court should adopt the JIN Guidelines for this case

63. The draft Supplemental Recognition Order specifically provides that the JIN Guidelines are adopted by this Court for the purposes to the Debtor's recognition proceeding.[56]

64. The JIN Guidelines address key aspects and the modalities for communication and cooperation amongst courts, insolvency representatives and other parties involved in cross-border insolvency proceedings in the interest of preserving enterprise value and reducing legal costs.

65. The Commercial List Users' Committee of the Superior Court of Justice – Ontario (Commercial List) is one of sixteen jurisdictions internationally that have adopted the JIN Guidelines. The JIN Guidelines are accordingly included in the draft Supplemental Order for completeness and clarity.

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[55] *Eagle River International Ltd., (Re)*, [2001] 3 S.C.R. 978; *Nortel Networks Corp., (Re)*, 2015 ONSC 1354 at paras 20-27.

[56] Supplemental Recognition Order at section 23.

PART IV – RELIEF REQUESTED

66. Recognition of the Chapter 11 Case in Canada and granting the relief related thereto is important and appropriate in the context of the Debtor pursuing a truly global resolution of its talc-related liabilities. Accordingly, the Foreign Representative requests that the Court grant the Initial Recognition Order and Supplemental Recognition Order in the forms included at Tabs 3 and 5 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of December, 2021.

Gordon McKee
Linc Rogers
Caitlin McIntyre
Lawyers for the Debtor and Foreign Representative

SCHEDULE "A"

LIST OF AUTHORITIES

Cases	
1.	*Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238
2.	*Payless Holdings LLC (Re)*, 2017 ONSC 2242
3.	*Horsehead Holdings Corp. (re)*, 2016 ONSC 958
4.	*Global Light Telecommunication Inc*. Re, 2004 BCSC 745
5.	*Lightsquared LP (Re)*, 2012 ONSC 2994
6.	*Purdue Pharma L.P., Re*, 2019 ONSC 7042
7.	*Morguard Investments Ltd. v De Savoye* (1990) 76 D.L.R. (4th) 256
8.	*Pacific Exploration & Production Corp. (Re)*, 2016 ONSC 5429
9.	*JTI-Macdonald Corp. (Re)*, 2019 ONSC 1625
10.	*Muscletech Research & Development Inc. (Re)*, 2006 19 C.B.R. (5th) 51
11.	*4519922 Canada Inc. (re)*, 2015 ONSC 124
12.	*Babcock & Wilcox Canada Ltd.*, 18 CBR (4th) 157 (ONSC)
13.	*Tucker v Aero Inventory (UK) LTd.*, 2009 CanLii 63138 (ONSC)
14.	*Lear Canada (re)*, 55 CBR (5th) 57 (ONSC)
15.	*syncreon Group B.V., Re*, 2019 ONSC 5774
16.	*Eagle River International Ltd., (Re)*, [2001] 3 S.C.R. 978

Cases	
17.	*Nortel Networks Corp., (Re)*, 2015 ONSC 1354

SCHEDULE "B"

TEXT OF RELEVANT STATUTES AND REGULATIONS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Definitions

2(1) In this Act,

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

Definitions

45 (1) the following definitions apply in this Part.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding. (*tribunal étranger*)

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding. (*secondaire*)

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization. (*instance étrangère*)

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

(a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding. (*représentant étranger*)

Centre of debtor company’s main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests.

Application for recognition of a foreign proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative’s authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2) (a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Order recognizing foreign proceeding

47 (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48 (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

> **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
>
> **(d)** prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

> **(a)** if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

> **(b)** respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
>
> **(c)** authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

Terms and conditions of orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

Cooperation — court

52 (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Obligations of foreign representative

53 If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

[…]

> **(b)** publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

Court File No.: CV-21-00673856-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF LTL MANAGEMENT LLC

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM OF THE
FOREIGN REPRSENTATIVE
(Recognition of Foreign Main Proceeding)
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